

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CHRISTOPHER KEITH JACKSON, By and)
through his Natural Mother and)
Legal Guardian, JUANITA JACKSON,)

Plaintiffs,)

vs.)

No. 4:06CV897-DJS

MISSOURI DEPARTMENT OF CORRECTIONS,)
STATE OF MISSOURI and UNKNOWN)
EMPLOYEES OF THE MISSOURI)
DEPARTMENT OF CORRECTIONS,)

Defendants.)

ORDER

Plaintiffs bring the instant action seeking damages for injuries allegedly sustained by plaintiff Christopher Keith Jackson when attacked by a violent cellmate at the Northeast Correctional Center in Bowling Green, Missouri. Count I of the complaint asserts a claim against defendants Missouri Department of Corrections, the State of Missouri and unknown corrections employees under 42 U.S.C. §1983. Count II asserts a claim against the same defendants on grounds of negligence. Now before the Court is the motion to dismiss of the State of Missouri and the Missouri Department of Corrections.

Plaintiffs concede that Eleventh Amendment immunity bars suit against the State and the Department of Corrections under §1983, and that Count 1 is subject to dismissal as against them.

The dismissal of Count 1 is also required because the State and the Department are not "persons" within the meaning of §1983. The Eleventh Amendment immunity also requires the dismissal of these defendants from the negligence claim asserted in Count 2. Absent consent or Congressional abrogation, "a suit in which the State or one of its agencies or departments is named as the defendant is proscribed by the Eleventh Amendment." Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 100 (1984). The motion to dismiss will therefore be granted, and defendants State of Missouri and Department of Corrections dismissed. At this time, the action remains pending against the unknown corrections employees also named as parties-defendant.

Accordingly,

IT IS HEREBY ORDERED that the motion to dismiss of the State of Missouri and the Missouri Department of Corrections [Doc. #5] is granted.

Dated this 3rd day of August, 2006.

/s/Donald J. Stohr
UNITED STATES DISTRICT JUDGE